

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:

Titus County, Texas

For Modification of the Satellite Television
Markets of Stations KLTU, Tyler, Texas; KETK-
TV, Jacksonville, Texas; KFXK-TV, Longview,
Texas; KYTX, Nacogdoches, Texas; and KTVT,
Fort Worth, Texas

MB Docket No. 12-1

ORDER

Adopted: February 19, 2020

Released: February 19, 2020

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Titus County, Texas (Titus) filed the above-captioned Petition seeking to be added to the local satellite television markets of five Texas stations (Stations).¹ Titus's Petition includes very limited supporting evidence. In light of the Commission's recent decision directing a strict adherence to the evidentiary requirements of the market modification rules,² the Bureau is unable to resolve Titus's Petition at this time. We therefore dismiss the Petition without prejudice, and invite Titus to refile its petition along with the necessary additional evidence.

II. BACKGROUND

2. Market modification provides a means for the Commission to expand or contract the local television market of a commercial television broadcast station. Broadcasters and pay TV providers, and in satellite market modification cases county governments, may request changes to the boundaries of a particular commercial broadcast television station's local television market to include a new community or communities in the same or an adjacent DMA. A television station may be carried by a cable operator or satellite carrier in such a new community if the station is shown to have a local relationship to that community based on an analysis of five statutory factors.³ The Commission requires that any market

¹ *Titus County, Texas for Modification of the Television Market of Stations KLTU (ABC), Channel 7 Tyler/Longview, Texas; KETK (NBC), Channel 56, Jacksonville, Tyler/Longview, Texas; KFXK (FOX), Channel 51, Longview, Texas; KYTX (CBS), Channel 19, Nacogdoches, Texas; and KTVT (CBS), Channel 11, Dallas Texas, with respect to Disn Network and DIRECTV*, Petition for Special Relief, MB Docket No. 12-1 (*Petition*).

² *La Plata County, Colorado Petitions for Modification of the Satellite Television Markets of KDVR-TV, KCNC-TV, KMGH-TV, and KUSA-TV, Denver, Colorado*, MB Docket Nos. 16-366, 16-367, 16-368, and 16-369, Memorandum Opinion and Order, 34 FCC Rcd 5030, 5038, para. 16 (2019) (*La Plata*); *see also infra* para. 3.

³ The five statutory factors are:

- (1) whether the station, or other stations located in the same area—(a) have been historically carried
(continued...)

modification petition include specific evidence describing the station's relationship to the community at issue.⁴ Market modification petitions that do not include the required evidence will be dismissed without prejudice and may be refiled with additional supporting evidence.⁵

3. In *La Plata*, the Commission affirmed the Bureau's decision, made on delegated authority, to grant a group of related market modification petitions.⁶ The Commission found that the Bureau had erred, however, in waiving the evidentiary requirements of section 76.59 of the rules. The Commission's rules direct that petitions failing to make a complete evidentiary showing "shall be

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on the cable system or systems within such community; and (b) have been historically carried on the satellite carrier or carriers serving such community;

- (2) whether the television station provides coverage or other local service to such community;
- (3) whether modifying the local market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence;
- (4) whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and
- (5) evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.

47 U.S.C. § 534(h)(1)(C)(ii)(I)-(V).

⁴ The Commission's rules require that the following evidence be submitted:

- (1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend or satellite carrier local receive facility locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market;
- (2) Noise-limited service contour maps delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas;
- (3) Available data on shopping and labor patterns in the local market;
- (4) Television station programming information derived from station logs or the local edition of the television guide;
- (5) Cable system or satellite carrier channel line-up cards or other exhibits establishing historic carriage, such as television guide listings;
- (6) Published audience data for the relevant station showing its average all day audience (*i.e.*, the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both multichannel video programming distributor (MVPD) and non-MVPD households or other specific audience information, such as station advertising and sales data or viewer contribution records; and
- (7) If applicable, a statement that the station is licensed to a community within the same state as the relevant community.

47 CFR § 76.59(b)(1)-(7) (governing both cable and satellite market modification petitions).

⁵ *Id.* § 76.59(c).

⁶ *La Plata*, 34 FCC Rcd at 5030, para. 1.

dismissed without prejudice.”⁷ The Commission stated an expectation in *La Plata* that “future petitioners seeking modification of a station’s market . . . [would] adhere to the requirements of section 76.59.”⁸ It therefore directed the Bureau to “dismiss without prejudice” petitions that did not include all evidence required by the Commission’s rules, unless the Petition demonstrates that a good-faith effort was made to obtain that evidence in order to justify a waiver of the dismissal requirement.⁹ The decision does note that the Bureau should apply this approach “only to petitions filed after [*La Plata*’s] release date.”¹⁰ In the instant Petition, filed after the release of *La Plata*, Titus provides evidence that is fully responsive to only two of the seven evidentiary requirements in our rules.

III. DISCUSSION

4. We find that the evidence submitted by Titus does not adhere to the evidentiary standards established in the Commission’s rules, and that its requested waivers are not accompanied by evidence of a good faith effort to obtain the missing evidence. Titus must address these deficiencies in order for the Commission to fully conduct its analysis.

5. Titus provides a number of maps showing the location of the county relative to state and DMA boundaries.¹¹ None of these maps, however, illustrate the relevant “evidence contributing to the scope of the market” that is required by section 76.59(b)(1) of our rules. Titus seeks no waiver with respect to this section of the rules. With respect to section 76.59(b)(2), Titus provides what are identified as “Digital Broadcast Signal Maps” created by the FCC’s Media Bureau, Video Division.¹² These maps do not specifically identify the noise-limited service contour of the Stations, nor do they identify the location of satellite carrier local receive facilities, as required by section 76.59(b)(2). Titus seeks no waiver with respect to this section of the rules. With respect to section 76.59(b)(3), Titus argues that data about shopping and labor patterns in the local market “should not impact” review of the Petition, and seeks “a waiver of [this section] as such information is not available to the County and offers little to no value to the Commission in assessing the merits of this petition.”¹³ Titus does not identify any efforts it made to procure this information, which is required in order to assess the merits of any market modification petition. We therefore decline to grant the requested waiver of section 76.59(b)(3).

6. With respect to section 76.59(b)(5) of our rules, Titus provides a “basic lineup card of coverage.”¹⁴ The provided programming schedule does not identify the dates it represents or the communities to which it is directed, however, so it does not provide any evidence regarding the historic availability of the Stations in the County.¹⁵ Titus seeks no waiver with respect to this section of the rules. With respect to section 76.59(b)(6), Titus does not provide published audience data for the Stations in the Communities.¹⁶ The County states that there was a “lack of available historical carriage” of the Stations,

⁷ 47 CFR § 76.59(c).

⁸ *La Plata*, 34 FCC Rcd at 5038, para. 16.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Petition* at 12, 13, 16, 17, 18.

¹² *Id.* at 12.

¹³ *Id.* at 6-7.

¹⁴ *Id.* at 6, 19-21.

¹⁵ As discussed in paragraph 7, *infra*, this submission does meet the requirements of section 76.59(b)(4) of our rules.

¹⁶ *Petition* at 7.

and it seeks a waiver of the requirement to provide the required published audience data.¹⁷ Titus does not identify any efforts it made to procure this information, nor does it provide sufficient information to confirm that the information does not exist.¹⁸ We therefore decline to grant the requested waiver of section 76.59(b)(6).

7. Titus does provide television station programming information that satisfies the requirements of section 76.59(b)(4),¹⁹ and does identify the community of license of each of the Stations as being in the same state as the county.²⁰ It also provides additional information in support of its petition, including letters from leaders and members of the community and information about sports blackouts that limit access to important in-state programming.²¹ While evidence not expressly required by the rules can be extremely helpful when considering a modification petition, it cannot supplant or substitute for the evidence required under section 76.59(b) of the Commission's rules.

8. As the rules state and as the Commission has recently affirmed, Petitions for special relief to modify television markets that do not include all of the evidence specifically required by our rules must be dismissed without prejudice, though they may be refiled at a later date. Moreover, parties may submit whatever additional evidence they deem appropriate and relevant with the supplemented Petition when it is refiled. In view of the foregoing, we dismiss Titus's Petition without prejudice, and invite them to refile a supplemented petition that conforms to the guidance provided herein.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 338 of the Communications Act of 1934, as amended, 47 U.S.C. § 338, and section 76.59 of the Commission's rules, 47 C.F.R. § 76.59, that the captioned petition for special relief (MB Docket No. 12-1) filed by Titus County, Texas, **IS DISMISSED WITHOUT PREJUDICE**.

¹⁷ *Id.*

¹⁸ If a required piece of evidence simply does not exist, that is good cause to waive the requirement to submit it. Other evidence provided by Titus, however, purports to show that three of the Stations provide at least some over-the-air signal coverage to the County. *Id.* at 13. Particularly given the value placed on these stations by Titus residents, it is possible that there is a measurable audience among non-MVPD households. Furthermore, the record does not show that there is no cable carriage of the Stations. Such carriage could result in measurable audience share among MVPD households.

¹⁹ *Id.* at 19-21.

²⁰ *Id.* at 1-2.

²¹ *See, e.g., id.* at 15, 17-18, 22-32.

10. This action is taken pursuant to authority delegated by section 0.283, 47 C.F.R. § 0.283, of the Commission's rules.²²

FEDERAL COMMUNICATIONS COMMISSION

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²² 47 CFR § 0.283.